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formance of an obligation, either before or after breach, when expressly accepted by the creditor in satisfaction, and under an agreement for that purpose, though without any new consideration, shall extinguish the obligation, promise, or undertaking. Held, that where on completion of plaintiffs' contract to construct certain houses for defendant, there was no claim on his part that the entire balance of the contract price was not payable in full, but he refused to pay unless plaintiffs deducted \$450.54 from their bill, which they were compelled to do because they were in financial straits and had to have the money, for which they executed a receipt in full, there was no acceptance of the lesser amount in satisfaction within the statute sufficient to preclude a recovery of the amount so deducted.

[Ed. Note.—For other cases, see Accord and Satisfaction, Cent. Dig. §§ 92, 93, 96; Dec. Dig. § 12.* 4 Va.-W. Va. Enc. Dig. 843.]

Error to Hustings Court, Part II, City of Richmond.

Action by Thomas & Cross against Harvey C. Brown. Judgment for defendants, and plaintiffs bring error. Reversed.

Hunsdon Cary, of Richmond, for plaintiffs in error.

Wallace F. Brown, of Richmond, for defendant in error.

TYSON, Clerk of Court, v. SCOTT et al.

March 12, 1914.

[81 S. E. 57.]

Limitation of Actions (§ 130*)—New Action—Appeal from Clerk's Order—Wills—Probate.—Code 1904, § 2934, provides that, if an action is commenced in due time, and judgment is reversed on a ground which does not preclude a new action for the same cause, or if there be occasion to bring a new suit by reason of the loss or destruction of any of the papers or records in a former suit which was in due time, or if, in a pending suit commenced in due time, plaintiff is found to have proceeded in the wrong forum, or brought the wrong form of action, and judgment is rendered against him on that ground alone, in every such case, notwithstanding the expiration of the time within which a new action must otherwise have been brought, the same may be brought within a year after such abatement, arrest, or reversal of judgment, etc. Held that, where relators instituted proceedings under Code 1904, § 2544, for the impeachment of a will and codicil, and it was held on appeal that the action could not be maintained prior to an appeal taken from the ex parte order of the clerk admitting the will and codicil to probate, as authorized by section 2639a, such appeal was not a "new suit" within sec-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

tion 2934, and hence could not be maintained within a year after the termination of the prior action, notwithstanding the expiration of the time limited for the taking of such appeal originally.

[Ed. Note.—For other cases, see Limitation of Actions, Cent. Dig. §§ 539, 545, 553-566; Dec. Dig. § 130.* 9 Va.-W. Va. Enc. Dig. 401.]

Error to Circuit Court, Northampton County.

Petition for mandamus by Clinton Scott against George T. Tyson, Clerk of the Circuit Court of Northampton County, to compel the granting of an appeal from an ex parte order admitting a will and codicil to probate. From an order awarding mandamus, the clerk and others bring error. Reversed.

C. V. Meredith, of Richmond, and *Otho. F. Mears*, of Eastville, for plaintiffs in error.

Westcott & Turlington, of Accomack, and *Jeffries, Wolcott, Wolcott & Lankford*, of Norfolk, for defendant in error.

WILLIAMS *v.* COMMONWEALTH *ex rel.* SMITH *et al.*

March 12, 1914.

[81 S. E. 61.]

1. Municipal Corporations (§ 138*)—Member of Council—Qualification—Residence.—Where member of the city council of A. was born in, and had been a resident of, and engaged in business for a number of years in the city of A., and had voted and paid taxes therein, including his poll tax, and owned a residence there, and also a store building, the principal portion of which he intended to remodel for use for dwelling purposes in case he should sell his dwelling, neither the fact that he occupied a summer cottage out of the city during the summer and also a part of the winter because his wife was soon to be confined, nor the fact that he had offered his residence in the city for sale, constituted an abandonment of his residence in the city such as rendered him ineligible as a member of the council, though he also had a place of business in the city of W.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. § 313; Dec. Dig. § 138.* 10 Va.-W. Va. Enc. Dig. 189; 14 Va.-W. Va. Enc. Dig. 750; 15 Va.-W. Va. Enc. Dig. 713.]

2. Words and Phrases—"Resident"—"Residence."—It is difficult to give an exact definition of what is meant by "resident" and "residence," as used in particular statutes. Their meaning is to be determined from the facts and circumstances in each particular case.

[Ed. Note.—For other definitions, see Words and Phrases, vol. 7,

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.